

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 08, 2024

SEAN F. MCVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

KARL KLINGER,

Plaintiff,

v.

LOWES HOME CENTERS LLC, and
JOHN DOES I-III,

Defendants.

No. 2:24-CV-00150-MKD

ORDER GRANTING STIPULATED
PROTECTIVE ORDER

ECF No. 14

The parties have submitted a Stipulated Protective Order to the Court. ECF No. 14. The Court finds good cause under Fed. R. Civ. P. 26(c) to issue an order to protect certain categories of information produced by a party in discovery in this matter to prevent annoyance, embarrassment, oppression, or undue burden or expense.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulated Protective Order, **ECF No. 14**, is **GRANTED**.

PROTECTIVE ORDER

1. All documents, testimony, and other materials produced by the parties in this case and labeled “Confidential” shall be used only in this proceeding.

2. Use of any information or documents labeled “Confidential” and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any business, commercial, or competitive purpose. This Protective Order, however, does not restrict the disclosure or use of any information or documents lawfully obtained by the receiving party through means or sources outside of this litigation or information in the public domain or that becomes part of the public domain through trial or otherwise. Should a dispute arise as to any specific information or document, the burden shall be on the party claiming that such information or document was lawfully obtained through means and sources outside of this litigation.

15 3. The parties, and third parties subpoenaed by one of the parties, may
16 designate as “Confidential” documents, testimony, written responses, or other
17 materials produced in this case if they contain information that the producing
18 party has a good faith basis for asserting is confidential under the applicable
19 legal standards. The party shall designate each page of the document with a stamp
20 identifying it as “Confidential,” if practical to do so.

1 4. Each party or non-party that designates information or items for
2 protection under this agreement must take care to limit any such designation to
3 specific material that qualifies under the appropriate standards. The designating
4 party must designate for protection only those parts of material, documents, items,
5 or oral or written communications that qualify, so that other portions of the
6 material, documents, items, or communications for which protection is not
7 warranted are not swept unjustifiably within the ambit of this agreement. Mass,
8 indiscriminate, or routinized designations are prohibited. Designations that are
9 shown to be clearly unjustified or that have been made for an improper purpose
10 (e.g., to unnecessarily encumber or delay the case development process or to
11 impose unnecessary expenses and burdens on other parties) expose the designating
12 party to sanctions. If it comes to a designating party's attention that information or
13 items that it designated for protection do not qualify for protection, the designating
14 party must promptly notify all other parties that it is withdrawing the mistaken
15 designation.

16 5. If portions of documents or other materials deemed "Confidential" or
17 any papers containing or making reference to such materials are filed with the
18 Court, they shall be filed under seal and marked as follows or in substantially
19 similar form:

20 CONFIDENTIAL

1 IN ACCORDANCE WITH A PROTECTIVE ORDER, THE
2 ENCLOSURE(S) SHALL BE TREATED AS CONFIDENTIAL
3 AND SHALL NOT BE SHOWN TO ANY PERSON OTHER
4 THAN THOSE PERSONS DESIGNATED IN PARAGRAPH 7 OF
5 THE PROTECTIVE ORDER.

6 If a party is filing a document that it has itself designated as “Confidential,” that
7 party shall reference this Stipulated Protective Order in submitting the documents
8 it proposes to maintain under seal. If a non-designating party is filing a document
9 that another party has designated as “Confidential,” then the non-designating party
10 shall file the document under seal. If the non-designating party makes a request in
11 writing to have the document unsealed and the designating party does not file,
12 within ten calendar days, a motion that shows good cause to maintain the
13 document under seal, then the Court shall unseal the document. Before seeking to
14 maintain the protection of documents filed with the Court, a party must assess
15 whether redaction is a viable alternative to complete nondisclosure.

16 6. Within thirty (30) days after receipt of the final transcript of the
17 deposition of any party or witness in this case, a party or the witness may designate
18 as “Confidential” any portion of the transcript that the party or witness contends
19 discloses confidential information. If a transcript containing any such material is
20 filed with the Court, it shall be filed under seal and marked in the manner
 described in paragraph 4. Unless otherwise agreed, all deposition transcripts shall
 be treated as “Confidential” until the expiration of the thirty-day period.

1 7. "Confidential" information and documents subject to this Protective
2 Order shall not be filed with the Court or included in whole or in part in pleadings,
3 motions, briefs, etc., filed in this case, except when any portion(s) of such
4 pleadings, motions, briefs, etc. have been filed under seal by counsel and marked
5 in the same manner as described in paragraph 4 above. Such sealed portion(s) of
6 pleadings, motions, briefs, documents, etc., shall be opened only by the Court or by
7 personnel authorized to do so by the Court.

8 8. Use of any information, documents, or portions of documents marked
9 "Confidential," including all information derived therefrom, shall be restricted
10 solely to the following persons, who agree to be bound by the terms of this
11 Protective Order, unless additional persons are stipulated by counsel or authorized
12 by the Court:

13 a. Outside counsel of record for the parties, and the administrative
14 staff of outside counsel's firms.

15 b. In-house counsel for the parties, and the administrative staff for
16 each inhouse counsel.

17 c. Any party to this action who is an individual, and every
18 employee, director, officer, or manager of any party to this action who
19 is not an individual, but only to the extent necessary to further the
20 interest of the parties in this litigation.

1 d. Independent consultants or expert witnesses (including partners,
2 associates and employees of the firm which employs such consultant
3 or expert) retained by a party or its attorneys for purposes of this
4 litigation, but only to the extent necessary to further the interest of the
5 parties in this litigation.

6 e. The Court and its personnel, including, but not limited to,
7 stenographic reporters regularly employed by the Court and
8 stenographic reporters not regularly employed by the Court who are
9 engaged by the Court or the parties during the litigation of this action,

10 f. The authors and the original recipients of the documents.

11 g. Any court reporter or videographer reporting a deposition.

12 h. Employees of copy services, microfilming or database services,
13 trial support firms and/or translators who are engaged by the parties
14 during the litigation of this action.

15 9. Prior to being shown any documents produced by another party

16 marked “Confidential,” any person listed under paragraph 7(c) or 7(d) shall agree
17 to be bound by the terms of this Order.

18 10. Whenever information designated as “Confidential” pursuant to this
19 Protective Order is to be discussed by a party or disclosed in a deposition, hearing,
20 or pre-trial proceeding, the designating party may exclude from the room any

1 person, other than persons designated in paragraph 8, as appropriate, for that
2 portion of the deposition, hearing or pre-trial proceeding.

3 11. Each party reserves the right to dispute the confidential status claimed
4 by any other party or subpoenaed party in accordance with this Protective Order.

5 If a party believes that any documents or materials have been inappropriately
6 designated by another party or subpoenaed party, that party shall confer with
7 counsel for the designating party. As part of that conferral, the designating party
8 must assess whether redaction is a viable alternative to complete non-disclosure. If
9 the parties are unable to resolve the matter informally, a party may file an
10 appropriate motion before the Court requesting that the Court determine whether
11 the Protective Order covers the document in dispute. Regardless of which party
12 files the motion, the party seeking to protect a document from disclosure bears the
13 burden of establishing good cause for why the document should not be disclosed.
14 A party who disagrees with another party's designation must nevertheless abide by
15 that designation until the matter is resolved by agreement of the parties or by order
16 of the Court.

17 12. The inadvertent failure to designate a document, testimony, or other
18 material as "Confidential" prior to disclosure shall not operate as a waiver of the
19 party's right to later designate the document, testimony, or other material as
20 "Confidential." The receiving party or its counsel shall not disclose such

1 documents or materials if that party knows or reasonably should know that a claim
2 of confidentiality would be made by the producing party. Promptly after receiving
3 notice from the producing party of a claim of confidentiality, the receiving party or
4 its counsel shall inform the producing party of all pertinent facts relating to the
5 prior disclosure of the newly designated documents or materials, and shall make
6 reasonable efforts to retrieve such documents and materials and to prevent further
7 disclosure.

8 13. Designation by either party of information or documents as
9 “Confidential,” or failure to so designate, will not be constitute an admission that
10 information or documents are or are not confidential or trade secrets. Neither party
11 may introduce into evidence in any proceeding between the parties, other than a
12 motion to determine whether the Protective Order covers the information or
13 documents in dispute, the fact that the other party designated or failed to designate
14 information or documents as “Confidential.”

15 14. Upon the request of the producing party or third party, within 30 days
16 after the entry of a final judgment no longer subject to appeal on the merits of this
17 case, or the execution of any agreement between the parties to resolve amicably
18 and settle this case, the parties and any person authorized by this Protective Order
19 to receive confidential information shall return to the producing party or third
20 party, or destroy, all information and documents subject to this Protective Order.

1 Returned materials shall be delivered in sealed envelopes marked "Confidential" to
2 respective counsel. The party requesting the return of materials shall pay the
3 reasonable costs of responding to its request. Notwithstanding the foregoing,
4 counsel for a party may retain archival copies of confidential documents.

5 15. This Protective Order shall not constitute a waiver of any party's or
6 non-party's right to oppose any discovery request or object to the admissibility of
7 any document, testimony or other information.

8 16. Nothing in this Protective Order shall prejudice any party from
9 seeking amendments to expand or restrict the rights of access to and use of
10 confidential information, or other modifications, subject to order by the Court.

11 17. The restrictions on disclosure and use of confidential information
12 shall survive the conclusion of this action and this Court shall retain jurisdiction of
13 this action after its conclusion for the purpose of enforcing the terms of this
14 Protective Order.

15 **IT IS SO ORDERED.** The District Court Executive is directed to file this
16 order and provide copies to the parties.

17 DATED November 8, 2024.

18 s/Mary K. Dimke
MARY K. DIMKE
19 UNITED STATES DISTRICT JUDGE
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